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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of:)	DOCKET NO. 2008-0115
)	
MOLOKAI PUBLIC UTILITIES, INC.,)	
WAI'OLA O MOLOKA'I, INC., and)	MOTION TO INTERVENE
MOSCO, INC.)	AND CERTIFICATE OF SERVICE
)	
)	
For Temporary Rate Relief.)	

MOTION TO INTERVENE

Comes now West Molokai Association (WMA), by and through its legal counsel, William W. Milks, pursuant to Sections 6-HAR-61-41 and 55 through 57, to move this Commission for authorization of WMA to participate as a party in the above-captioned proceeding with all of the attendant rights, including the right to be heard, to present evidence, and to cross-examine any testimonies adverse to WMA's interests.

The format and content of this motion conforms to the requirements set forth in Subsection 6-HAR-61-55(b).

NATURE OF MOVANT'S RIGHT TO PARTICIPATE AS A PARTY
[Refer Subsection 6-HAR-61-55(b)(1)]

WMA is a non-profit corporation organized to provide for the management, maintenance, protection, preservation, architectural control, and development of properties of the Island of Molokai, within the area commonly referred to as "West Molokai" or "Kaluakoi" and to promote the health, safety, and welfare of the members of WMA.

WMA's membership is comprised of owners of the 817 properties located within Kaluakoi/West Molokai. Water and sewer services are provided to the members of WMA by two of the utility companies named as parties to this Docket, namely Molokai Public Utilities, Inc and Mosco, Inc.(herein, "Utilities").

On May 30, 2008, Utilities provided notice to the Commission that unless some public or private entity assumes operations of Utilities by the end of August, 2008, Utilities would likely cease operations, resulting in the termination of essential services to customers of Utilities. Termination of essential services jeopardizes the health, safety, and public welfare of WMA's members and other individuals residing and conducting business on the island of Molokai

**WMA'S PROPERTY, FINANCIAL AND OTHER INTERESTS IN THE PENDING
MATTER
[Refer Subsection 6-HAR-61-55(b)(2)]**

The Kaluakoi/West Molokai area includes homes and lots in the Papohaku Ranchlands, three condominium projects, homes and lots on the recently closed golf course, Moana Makani homes and lots, Papohaku Beach Park as well as other public beaches and facilities, and fire hydrants situated on major thoroughfares and connecting loop roads. All of these homes, condominiums, and public facilities require the essential services provided by Utilities to protect public health and safety.

The value of the property and other interests has not been estimated, but it is substantial. The values of the individual properties have – by all indications -- diminished substantially due to (a) the public statements regarding abandonment of services by Molokai Properties, Ltd., and its affiliated Utilities and (b) Maui County's stated intentions that it would not provide water and sewer services to Utilities' existing customers. WMA's property, financial, safety, and health interests and the general welfare have all been directly, adversely impacted by the Utilities and

MPL's recent actions and will be more severely impacted if appropriate relief is not forthcoming as a result of this proceeding.

THE EFFECT OF THE COMMISSION'S PENDING ORDER ON WMA'S INTERESTS
[Refer Subsection 6-HAR-61-55(b)(3)]

As stated supra, the property and financial interests of the individual members of WMA have been severely and adversely impacted. In addition, the Commission's June 16, 2008 Order proposing a 40.95% increase for MPU's services will be born, virtually in its entirety, by the individual members of WMA. The Commission has taken unprecedented action intending to impose the consequences of Utilities' imprudent actions and failures to take essential actions, squarely on WMA's members. The Commission's unprecedented step is proposed for a temporary period of six months. One of WMA's concerns is the transforming of temporary relief to something more permanent without regard to both a thorough rate investigation and implementation of a long term solutions. Clearly, the Commission's actions to date and its proposed action have a direct and an immediate impact on WMA's membership.

WMA had hoped that the Commission's initiative (albeit unprecedented, sua sponte, and possibly unavoidable) would have had a positive impact on Utilities. The effect has been the opposite: by correspondence to the Commission dated June 23, 2008, Utilities and MPL state that even with such massive rate relief the Commission's actions will not deter MPL from ceasing Utilities' operations:

"Should either the allocation proceeding (i.e. the Commission on Water Resource Management's Well 17 permit) be reconvened or the DOA require MPU to proceed with the development of an environmental assessment to determine the impact of the Utilities' use of the Molokai Irrigation System (MIS), MPU will not be able to meet those demands and will be forced to cease operation regardless of any rate increase."(Emphasis added.)

The Commission's order currently appears to offer little promise of either a short or long term solution to this water and sewer crisis.

**NO OTHER MEANS AVAILABLE WHEREBY WMA'S INTERESTS MAY BE
PROTECTED**
[Subsection 6-HAR-61-55(b)(4)]

The interests of WMA's members are numerous, substantial, and varied; however, with regard to the imposed increase in Utilities rates, and the legal posture before this Commission taken by the Utilities and MPL, the situation strongly suggest that WMA's interests are in peril.

Given MPL's June 23, 2008 statement accompanying the transmittal of financial data in response to the (commission's request for information that it will "cease operation regardless of any increase," there may be no other means available to WMA to protect and advance its interests. But for the present it appears that the Commission is the only forum available in which the Commission and WMA can seek out a workable solution.

**WMA'S SPECIFIC INTERESTS WILL NOT BE REPRESENTED BY ANY OF THE
EXISTING PARTIES**
[Subsection 6-HAR-61-55(b)(5)]

To date, the parties to the proceeding are MPU, Wai'ola, Mosco, the Consumer Advocate, MPL, and the County of Maui. Tin the proceeding he Commission has yet to include a knowledgeable voice of customers who consume and pay for Utilities' services. WMA is such an organization WMA knows the nature of the services provided and its members have the most direct financial, health, safety, and property interests affected if the services are terminated or if rates are set at such a level as to make the services prohibitively expensive.

WMA is an interested party and beneficiary of any permit issued in the CWRM contested case proceeding -- including matters appealed to the Hawaii Supreme Court and recently remanded to CWRM. Neither Molokai Public Utilities nor its successor has the legally enforceable right provide water services to WMA members without being a prevailing party the CWRM contested case.

The interests of WMA are distinguishable and can otherwise be differentiated from the Hawaii Division of Consumer Advocacy (DCA). DCA represents many of the common goals of all parties to this proceeding, namely provision of essential water and wastewater services over the long term at reasonable rates. However, because DCA must represent the interests of customers of Waiola O Molokai , which customers include Mauanaloa, Kualapuu, south Kalae and other adjacent areas in Central and West Molokai, DCA must divide its attention in representing WMA's interests. Further, DCA neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer the Commission. Further, WMA has access to information which will be of assistance to the Commission and to DCA. Such information could be made available via time-consuming discovery procedures, but time can be curtailed if WMA participates directly. WMA will offer testimony on its own behalf. This is particularly important in a proceeding in which processes and procedures must be expedited.

The County of Maui is named as a party to the proceeding. To a limited extent, the County of Maui represents the interests of WMA, but to date appears to be reluctant to fulfill its legal mandate to provide potable water for domestic use, fire protection, etc. County of Maui does not appear to have conducted a comprehensive inspection of the Utilities sewer or water system; at least it has not made any such inspection report available to WMA as WMA specifically requested. County's reluctance, to date, to take any positive steps toward a

meaningful long term or short term solution indicates that its interest in this proceeding is adverse to WMA's interests. Therefore, County of Maui does not represent the interests of WMA in this proceeding.

In summary, in light of the position taken by MPL and Utilities it is unclear which party if any, can protect and advance WMA's interests. Well established law governing intervention in Hawaii administrative hearings compels authorization of WMA to fully participate as a part in this proceeding.

**WMA'S PARTICIPATION WILL ASSIST IN THE DEVELOPMENT OF A SOUND
RECORD**

[Subsection 6-HAR-61-55(b)(6)]

WMA has valuable information which may ultimately assist the Commission in its fact-finding efforts in HPUC Docket No. 2008-0115. For example, WMA's members have been monitoring the water and wastewater situation on the island for several years. WMA is intimately familiar with controversies regarding the permitting and transportation of water from Well No. 17 across the Molokai plateau to West Molokai.

With regard to permitting the use of water from Well 17, WMA's knowledge will be of great assistance in the development of a sound evidentiary record in this proceeding/.

As stated, supra, (Subsection 6-HAR-61-55(b)(5)), WMA is the only party that possess evidence directly derived from actual use of Utilities services.

**WMA'S PARTICIPATION WILL NOT UNDULY BROADEN THE ISSUES OR DELAY
THE PROCEEDING**

[Subsection 6-HAR-61-55(b)(7)]

The Commission has yet to articulate the issues to be determined in this unprecedented, sua sponte filing for temporary increases in Utilities' rates. Therefore it remains uncertain as to

the breadth of the issues to be resolved, or the depth with which a particular issue may be explored. Notwithstanding the uncertainty of issues, WMA herein represents that it will not unduly broaden the issues in the proceeding nor interpose requests or procedures that will unduly delay the proceeding. WMA desires to participate in a constructive fashion. As a major stakeholder in the outcome of this proceeding, WMA is motivated to articulate its position on issues formulated by the Commission, and endeavor to resolve such issues in the most informed possible manner, understanding the need for expediency.

WMA'S INTERESTS IN THE PROCEEDING DIFFER FROM THE GENERAL PUBLIC
[Subsection 6-HAR-61-55(b)(8)]

The extent of the interests of the public is not clear. For example, the County of Maui has an interest in avoiding, to the extent possible, subsidizing essential services on Molokai at the expense of other Maui County taxpayers. Similarly, State agencies such as the Department of Agriculture and CMRW represent the interests of the general public, but may have a greater \ interest in the maintenance of precedential decisions than WMA has in this proceeding.

Generally, however, WMA believes that its interest in the proceeding -- obtaining potable water for domestic use at reasonable rates over the short-term and long-term -- is similar to the objectives of the Commission and the Consumer Advocate. But, such a mutual interest now appears at odds with Utilities' interest (which is to get out of the business) and the County's currently expressed interest (which is to reject any transfer of the Utilities and to accept no responsibility for providing a basic water and sewer services).

In sum, WMA herein contends that its perspective on the anticipated issues in this case are unique, have value to the Commission, and should be heard by WMA as a party to the proceeding.

WMA'S TENTATIVE POSITION OF THE PROPOSED RELIEF
[Refer Subsection 6-HAR-61-55(b)(9)]

The Commission has indicated its intent to grant rate increases to Utilities at levels which will impose enormous financial hardship on many of WMA's members. Without any evidence that (1) a third party buyer of the Utilities can be located within the timeframe of the rate increase and (2) that the County of Maui will take positive action to exercise its power of eminent domain or otherwise acquire the Utilities within the timeframe of the rate increase, WMA takes the tentative position that the action proposed by the Commission will not provide the intended relief.


It should be noted that concurrent with the filing of WMA's "Motion to Intervene" in this proceeding, it is filing a "Motion to Intervene" in HPUC Docket No. 2008-0116, a formal complaint request by the County of Maui against Waiola O Molokai, Molokai Public Utilities, Inc., and Moscow, Inc. WMA is generally in accord with the requests for relief that the County of Maui is seeking in its complaint.

CONCLUSION

Based on the foregoing, WMA respectfully requests the Commission to grant WMA full participation as a party, without limitation.

Dated: Honolulu, Hawaii, July 3, 2008.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Wm W. Milks', written over a horizontal line.

William W. Milks,
Counsel for West Molokai Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion will be served on the following named parties, in the manner indicated, on the filing date of said Motion:

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DATED: Honolulu, Hawaii, July 3, 2008.



WILLIAM W. MILKS
Counsel for West Molokai Association